IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 27TH NOVEMBER 2007 / 6TH AGRAHAYANA 1929

CRL.A.No. 1133 of 2004()

SC.28/1997 of SESSIONS COURT, MANJERI
CP.9/1996 of JUDL.MAGISTRATE OF FIRST CLASS COURT-I, MANJERI
.....

APPELLANT:

K.C.MUHAMMED, CONVICT NO.9625,
CENTRAL PRISON, KANNUR.

BY ADV. SRI.DEEPU THANKAN

RESPONDENTS:

STATE OF KERALA REPRESENTED BY A PUBLIC
PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.NOBLE MATHEW

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 27/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA,JJ.

Crl.A.NO. 1133 OF 20O4

Dated this the 27th day of November, 2007

JUDGMENT

Koshy, J.

The appellant was convicted for offence punishable under Section 302 of the Indian Penal Code for murdering his wife on 6.4.1995 at about 8.30 PM in his house. The accused, deceased wife and two children, Pws 1 and 2, were staying in a rented house at Edavanna Panchayat. It is the case of the prosecution that accused had been ill-treating his wife and on 6.4.1995, he doused her in kerosene and set fire to her. Pws 1 and 2 attempted to put off the fire and the accused restrained them. She was taken to the Medical College Hospital, Calicut and died on 11.4.1995. According to the prosecution, she herself gave First Information Statement, Exhibit P15, to the police and on that basis, Exhibit P5 FIR was registered. In Exhibit P15 FI statement it was stated that her husband was ill-treating her and she was set fire by her husband. PW1 is her son. He was only 7 years old at that time. He gave evidence when he was 15 years of age. He deposed that he and PW2, along with the deceased and the accused were staying in the rented house at the relevant

time. PW1 and his elder brother were in the adjacent room at the time of incident, near the kitchen. Hearing the cry of the deceased, they came to the kitchen and found their mother in flames. He also stated that the accused was in the kitchen when they came there. Seeing Pws 1 and 2, the accused went out of the kitchen and he along with PW2 poured water on the deceased and put off the fire. Hearing the hue and cry, the neighbours came and the deceased was taken to the Government Hospital, Manjeri and from there, to the Medical College Hospital, Calicut. He also deposed that at the time when they reached hospital, she was conscious and able to speak. He also stated that it was the daily pattern of the accused to assault his mother. The accused used to come home drunk every evening and assault her. He denied the 161 statements and stated that the accused was not in the house at the relevant time. He also stated that mother was unable to speak when he found her on flame. But he stated that he along with PW2 was sleeping in the adjacent room, when the incident occurred. But, according to him, PW1 was still sleeping when he went to the kitchen and he alone poured water and mother was unconscious. But in cross-examination, apart from marking Exhibits P1 to P1(b) and contents in statements given to police, it has also come out in evidence that

he was living with the accused at the time when he was giving evidence. PW3, who is a close neighbour of the accused, deposed that at 8.30 PM he heard hue and cry from the house of the accused. He rushed there and found the deceased in flames in their kitchen. PW1 and PW2 were also there. Himself and Pws 1 and 2 put off the fire pouring water on the deceased and when PW3 asked, the deceased told that while she was doing work in the kitchen, the accused poured kerosene on her and set fire to her. Pws 1 and 2 also told the same thing to him. They took the deceased to the Government Hospital, Manjeri. When asked by the doctor, the deceased told the doctor also that her husband doused her in kerosene and set fire to her. As instructed by the doctor, the deceased was taken to the Medical College Hospital, Calicut. PW3 also stated that accused used to quarrel with the deceased suspecting her fidelity. PW4, another neighbour also accompanied her to the District Hospital, Manjeri. She also stated that the deceased told the doctor in her presence that her husband set fire to her. She stated that to her also the deceased stated that her husband doused her in kerosene and set fire to her.

2. Now we shall consider the evidence of PW5 doctor, who examined the deceased at the District Hospital, Manjeri at 10.15 PM.

The injury shown in the wound certificate is that extensive burns involving face, neck, chest, upper limbs, abdomen and thigh. The deceased herself told him the history and alleged cause of injury as due to her husband Muhammed spilling kerosene on her and setting fire to her, at about 9.45 PM on 6.4.1995. The doctor also deposed that at the time of examination, the patient was conscious, well oriented and was able to understand things and the patient herself told him the history and cause of injury. Nothing has come out in the cross-examination against his deposition. Exhibit P3 is the postmortem certificate which shows that the death was due to burn injury.

3. According to 313 statement, the contention of the accused was that he and his wife were very cordial in his house. He had asked PW3 Muhammed not to contact with his wife. He disliked her in going to the mosque. But she joined Mujahidin sect. He belongs to Sunni and on the previous day he abused his wife for that and he went for work and when he returned on the next day, he heard about the incident and immediately he went to the police station and surrendered. He had not stated in which place he went for work. He also did not adduce any evidence to prove the plea of alibi pleaded by him to show that he was not in his house at the time of

occurrence. It is settled law that if the accused takes the plea of alibi, it is for him to prove the same as held by the Apex Court in ***Rajesh Kumar v. Dharamvir and others*** ((1997) SCC (Crl)591), plea of alibi should be proved with absolute certainty. When the wife of accused was murdered in the house, where he, his wife and their small children were staying, burden is on the accused to prove that he is not responsible for the accident as held by the Apex Court in ***Rajkumar Prasad Thamarkar v. State of Bihar*** (AIR 2007 SCW 295). See also ***Trimukh Maroti Kirkan v. State of Maharashtra*** (JT 2006(9) 50).

4. We are of the view that there is nothing to disbelieve PW5 doctor, who examined the deceased immediately when she was taken to the District Hospital, Manjeri. She was conscious at that time and she stated him that her husband poured kerosene on her. The above version is fully corroborated by PW3 as well as PW4. There is no allegation against PW4. Pws 3 and 4 are neighbours who took the deceased to the hospital. They stated that they were told by the deceased when asked that her husband set fire by pouring kerosene. It is the same version which is recorded by the doctor also. Exhibit P15 FI statement given by her also states the same thing. Even if Exhibit P15 is not accepted as dying declaration,

there is nothing to disbelieve the version made by her to the doctor and Pws 3 and 4. Even otherwise, he was living with wife and children in the house. If he pleads alibi, the burden is on him to prove the plea of alibi. In this case, the dying declaration is recorded in the wound certificate proved by PW5 doctor. In this case we refer the decision of the Apex Court in State of U.P. v. Ram Sagar Yadav (AIR 1985 SC 414). There is also no ground to disbelieve the evidence of occurrence witness, PW1. The evidence of Pws 3 and 4 are believable and trustworthy and considering the totality of evidence, we are of the view that conviction and sentence passed by the trial court is fully justified. We see no reason to interfere with the conviction and sentence. The appeal is dismissed.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

vgs.

J.B.KOSHY & K.HEMA, JJ.

Crl.A.NO.1333 OF 2004

JUDGMENT

27.11.2007